And in First Nat. Bank *v.* American Cent. Ins. Co. (Minn.), 60 N. W. 345, the policy contained a printed condition avoiding it if the subject of the insurance is personal property, and be or become incumbered with a chattel mortgage. Held, the subsequent written portion of the policy, insuring the property of the insured, "its own, or held by it in trust or on commission, or sold but not delivered," did not annul or supersede the condition against such chattel mortgage incumbrance, and the placing of such an incumbrance on the property after the making of the policy, and before the loss, avoided the policy.

A stipulation in a policy of fire insurance that the same shall become void if the property "be or become incumbered by a chattel mortgage" is binding where the company has no actual knowledge of an incumbrance when the policy is issued, though there be a chattel mortgage then on record, and though no written application for insurance is made, and no questions are asked regarding incumbrances. Crikelair *v.* Citizens' Ins. Co., 168 Ill. 309, 48 N. E. 167.

Where plaintiff insured wheat subject to a chattel mortgage, of which the insurer was not shown to have had notice, under a policy providing that it should be void if so incumbered, plaintiff was not entitled to recover thereon, though such mortgage was discharged the day following the execution of the policy, since its existence constituted a forfeiture, which could only be waived by the insurer. Ins. Co. of North America *v.* Wicker (Tex.), 55 S. W. 740.

Where a clause of an insurance policy provided that the entire policy should be void if the assured had or should procure other insurance, or incumber the property by mortgage, the existence of a mortgage and prior insurance on the insured property invalidated such policy, though the assured was not examined as to whether his property was incumbered, or verbally informed of the effect of such prior insurance or incumbrance, by defendant, such facts not constituting a waiver of the condition. Wilcox *v.* Continental Ins. Co., 85 Wis. 193, 55 N. W. 188.

Where a note secured by chattel mortgage on wheat was never delivered, such incumbrance did not invalidate a policy insuring the wheat, conditioned to be void if the subject of the insurance should be incumbered by a chattel mortgage. Ins. Co. of North America *v.* Wicker (Tex.), 55 S. W. 740.

For an additional note relative to this point, see vol. XIII, p. 297, Va. Law. Register.

DIGEST OF OTHER RECENT VIRGINIA DECISIONS.

Supreme Court of Appeals.

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

LIQUID CARBONIC CO. *v.* NORFOLK & W. RY. CO.

Sept. 12, 1907.

[58 S. E. 569.]

Carriers—Limiting Liability—Claims for Damages—Notice.—A stipulation in a bill of lading of a carrier that, unless claims for dam-

ages are made within 30 days, the carrier shall not be liable in any event, does not exonerate the carrier from negligence, in violation of Va. Code 1904, § 1294l, providing that no contract shall exempt any carrier from liability, and is a reasonable regulation, and the failure to present a claim for damages within the time prescribed relieves the carrier from liability.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 9, Carriers, § 670.]

ALBERT *v.* TIDEWATER RY. CO.

Sept. 12, 1907.

[58 S. E. 575.]

1. Evidence—Parol Evidence—Admissibility—Varying Terms of Contract.—In a suit for the specific performance of a contract binding an owner to convey to a railway company a right of way 50 feet wide on each side of the center line thereof as finally located at $100 per acre, evidence that the line of the railway had been located prior to the execution of the contract, that the owner knew thereof, and that a portion of the right of way included a part of a right of way previously conveyed by the owner to the company, was admissible to explain the ambiguity in the contract arising from the fact that the two rights of way covered part of the same land, and to show that the company should pay only for the land not previously conveyed.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 20, Evidence, § 2083.]

2. Railroads—Right of Way—Contracts—Construction.—A railway company purchased a right of way and obtained a deed therefor. Subsequently the grantor and the company entered into a contract binding the owner to convey to the company a right of way 50 feet wide on each side of the center line thereof as finally located in consideration of $100 per acre, and binding the company to reconvey the right of way previously conveyed to it, and providing that it should receive a specified credit for such reconveyance. The parties knew at the time of the execution of the contract that the location of the right of way therein referred to covered about half of the right of way conveyed by the deed, and that the company would acquire about 10 acres of new land and would abandon about 8 acres of the right of way conveyed by the deed. Held, that the company was required to pay $100 per acre for the new land and reconvey that portion of the old right of way not used, for which it was entitled to the specified credit.